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GOVERNOR

STATE OF MAINE
MAINE DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES
BOARD OF PESTICIDES CONTROL
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BOARD OF PESTICIDES CONTROL

October 5, 2007

State of Maine Performance & Training Facility, Lower Level Conference Room
10 Mountain Avenue (off Route 201 going toward Skowhegan), Fairfield
(Exit 133 from I-95)

MINUTES

9:30 A.M.

☒ Present: Eckert, Simonds, Stevenson and Jemison

1. Introductions of Board and Staff

☒ The Board, Staff and Assistant Attorney General Randlett introduced themselves

2. Minutes of the September 7, 2007, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or approve

☒ Simonds/Jemison: Moved and seconded approval of the minutes

In Favor: Unanimous

3. Final Review of Draft Best Management Practices (BMPs) for the Application of Turf Pesticides and Fertilizers

At the July 25, 2005, meeting, the staff presented information on pesticide use by lawn care companies during an exceptionally wet period in May. Consequently, members directed the staff to seek volunteers to serve on a stakeholder committee to develop turf care best management practices to protect water resources. The Board reviewed a list of individuals who expressed an interest in participating on a committee at the February 24, 2006, meeting and directed Fish, Simonds and Jemison to choose the membership and convene the stakeholders committee. The committee met three times and produced a set of draft BMPs that the Board reviewed at its October 13, 2006, meeting. The BMPs went through additional review at two turf seminars and at the Maine Turf Conference. The BMPs were posted on the Board's website and written comments were also solicited. A

fourth committee meeting was held to review comments and the draft BMPs are being presented to the Board for a final review.

Presentation by: Gary Fish
Manager of Pesticide Programs

Action Needed: Approve best management practices

- ☒ Fish reviewed the history of the topic and the development of the draft BMPs over the last two years. Affected parties had multiple opportunities to comment, and all comments were considered and incorporated as appropriate.

Simonds stated that Fish had done most of the work. He felt the BMPs had come out very well and would be useful both as an educational tool and as an enforcement tool. Jemison asked which aspect of the BMPs had caused the most concern. Fish responded that the seasonal cut-off dates for fertilizer/pesticide applications were a concern for many. Stevenson asked about incorporating the BMPs into the training manual. Fish agreed it should be considered when the next revision occurs.

Simonds/Jemison: Moved and seconded approval of the BMPs

In Favor: Unanimous

4. Review of Draft Rule Amendment to Chapter 26 of the Board's Rules

In May of 2006, the Board adopted Chapter 26, Standards for Indoor Pesticide Applications and Notification for All Occupied Buildings Except K-12 Schools. The new rule became effective on January 1, 2007. Since the rule was adopted, pest management professionals have alerted the Board that the advance notice requirements are creating unreasonable hardships for both applicators and customers. The Board held a preliminary review of those concerns at its June 22 meeting, and reviewed some staff options to address those concerns at the September 7 meeting. The Board directed the staff to develop a draft rule amendment focusing on a notification exemption for crack and crevice treatments. The Board will now review the staff's draft and determine if it is ready for rulemaking.

Presentation By: Gary Fish
Manager of Pesticide Programs

Action Needed: Determine final language for rulemaking

- ☒ Fish stated the current draft amendment contained only a few changes including an exemption from notification for crack and crevice treatments, minor changes to the sign and clarification of who's responsible for the notice requirements.

Staff and Board members briefly discussed issues related to the sign. Fish pointed out that the Board's office has been receiving calls from people trying to obtain specific information about pending pesticide applications. Those calls should have gone to the company making the application, but apparently some companies were neglecting to ensure the signs had been filled out properly. Several suggestions were made about

revising the sign to ensure that questions are appropriately directed. Connors suggested adding space for the time of application.

Eckert asked whether people would have the right to ask for additional information about pesticide applications that are exempted from the notice/posting requirements. A short discussion ensued and consensus was reached to modify the exemption provisions to exclude paragraph 3(D), thus providing a mechanism for individuals to obtain additional information about pesticide applications exempt from notice requirements. Finally, Randlett alerted the Board that he felt the use of the word “certifies” in the last sentence of the Sections 3(A)(3), 3B and 3C was probably not the most appropriate word. He suggested substituting the word “confirms”. Board members agreed with that change.

Simonds/Jemison: Moved and seconded to initiate rulemaking on the proposed revisions to Chapter 26, as amended during the meeting.

In Favor: Unanimous

5. Continued Discussion About Acceptable Systems of “Verifiable Authorization”

A public hearing was held on November 17, 2006, on a series of minor housekeeping amendments to eight different rule chapters. Among the proposed changes was a new provision in Chapter 20 that would require commercial applicators providing ongoing, periodic applications to enter into a written contract with their customers. The Board subsequently modified the requirement based on comments to allow companies to either enter into written contracts or to utilize another system of verifiable authorization approved by the Board. The new provisions will become effective on January 1, 2008. The Board held preliminary discussions on “verifiable authorization” at its June 22 meeting. The staff has incorporated comments and the Board will now continue discussions on what approaches they will likely approve for verifiable authorization.

Presentation by: Henry Jennings
Director

Action Needed: Determine Acceptable Forms of Verifiable Authorization

- ☒ Jennings reminded Board members that they last discussed this subject at the June 22, 2007, Board meeting. At that time, the Board directed the staff incorporate a few minor suggestions and bring back a menu of options that are verifiable.

Jennings reviewed the memo dated September 26, 2007, which listed four stand-alone options and two methods that need to be used together for verifying that customers wish to contract for ongoing services. Stevenson suggested that automated phone calls should also be considered as a verification method. Simonds pointed out that there is no way to verify that anyone listened to an automated phone call, especially a responsible adult. However, Board members determined automated calls were essentially equivalent to a confirmation letter, and directed the staff to list automated calls as a third option for those approaches that require at least two methods for adequate verification of the customer’s authorization.

Stevenson questioned the need to verify that longstanding customers understand they have agreed to ongoing service. He stated that his company has had some customers for 40 years. Board members discussed the pros and cons to exempting long-standing customers from the verified authorization requirement. Consensus was reached to add a new section exempting customers of at least five years.

6. Continued Discussion of Potential Rulemaking Initiative to Regulate the Use of Bt Corn

At its July 27, 2007, meeting, the Board voted to approve registration applications for seven Bt field corn products. At that time, the Board also directed the staff to bring back a draft rule to address Board concerns about insect resistance and pollen drift. At the September 7 meeting, the staff presented some preliminary language for the Board to review. Following discussion, the Board directed the staff to incorporate recommendations and bring a revised draft to the next meeting. The Board will now review the staff's draft and determine if it is ready for rulemaking.

Presentation by: Gary Fish
Manager of Pesticide Programs

Action Needed: Determine final language for rulemaking

- ☒ Jennings began by alerting Board members that development of the rule had become contentious. People objected to the fact that certain comments had been distributed about the rule from the September 7, 2007, meeting, but comments on the rule received just prior to the October 5 meeting were not. The staff recently received five comments on the draft rule language. Assistant Attorney General Randlett subsequently advised the staff not to provide those comments to the Board at this time, since the rule was now in that awkward phase of development where no further public input is appropriate until the notice is published by the Secretary of State.

A lengthy discussion ensued on the propriety of accepting comment at different phases of rule development. Randlett described the legal requirements contained under the Maine Administrative Procedures Act.

Fish next inquired whether the current draft rule reflected the Board's consensus. Jemison stated he felt the current draft reflected the collective sentiments of the seven Board members, but that not every member agreed with each component. He stated he could not support inclusion of a mandatory buffer requirement for Bt corn growers, and suggested that protection of nearby crops is something that could be worked out by growers and their neighbors.

Another discussion followed on whether the buffer requirements should be retained in the rulemaking proposal. Simonds acknowledged it was both a difficult and contentious issue, but he saw some logic in retaining that element so the Board could entertain public comment on the subject. Eventually, consensus was reached to delete the buffer requirement from the proposal. In addition, the 660-foot distance within which the grower was originally required to keep a map indicating Bt corn's location in relation to other crops was changed to 500 feet; this distance is consistent with the distance for

which abutters may request notification, and the distance from a target area for which sensitive areas must be identified.

Fish asked if the Board supported the remaining components of the draft proposal. Members agreed the remaining components should be retained and sent forward in a rulemaking proposal.

Simonds/Jemison: Moved and seconded to direct the staff to initiate rulemaking on draft proposal as amended.

In Favor: Unanimous

7. Continued Discussion of Potential Changes to Address Concerns with Aerial Applications

At its November 17, 2006, meeting, the Board established a Stakeholders Committee on aerial application issues. The committee was charged with developing recommendations for Board consideration which would address aerial spraying concerns. The committee met five times from March through July and developed a prioritized list of recommendations. The Board reviewed the report and heard testimony from concerned citizens at its July 27, 2007, meeting, and it directed the staff to begin framing regulatory language covering notification, drift management plans and verification of the correct site. The Board reviewed initial draft rule amendments at the September 7 meeting. Members also agreed to review the Stakeholders Committee Report and do its own prioritization. The Board will now continue discussing potential changes to address concerns with aerial spraying.

Presentation by: Henry Jennings
Director

Action Needed: Provide additional direction to staff about potential changes to pursue

- ☒ Hicks briefly reviewed the Board's prioritized list of approaches to addressing concerns with aerial applications. Eckert mentioned that some elements appeared to be beyond the purview of the Board, such as the creation of farm zones. Simonds suggested that a significant portion of the planning session be devoted to discussing aerial application issues. David Bell of the Maine Blueberry Commission asked how the Board planned to proceed with this issue. He stated that the July 27 minutes indicated the Board had received testimony on the subject, and some of his constituents had asked if growers had missed an opportunity to provide input to the Board. In response to Bell's concern, the Board reached consensus to abandon current draft rules and schedule a Public Information Gathering Meeting in conjunction with the December Board Meeting.

8. Continued Discussion Concerning Potential Development of Buffer Zones to Protect Surface Water

At the July 21, 2006, meeting, the Board reviewed its prioritization balloting for discretionary tasks discussed at its 2006 planning session in June. Development of buffer zones to protect water quality ranked as the Board's number four priority. The Board

reviewed potential language and concepts at the January, February, March, June and September 2007 Board Meetings. At the September 7 meeting, the staff was asked to include an exemption for tick and mosquito spraying in the draft language. The Board will now review the latest revisions.

Presentation by: Henry Jennings
Director

Action Needed: Continue refinement of the draft language

- ☒ Jennings stated the most recent draft had been updated to include an exemption for tick and mosquito spraying. Eckert suggested, and Board members agreed, that it might be appropriate to clarify that the exemption is for vectors of human disease.

Jemison/Stevenson: Moved and seconded to direct the staff to initiate rulemaking on of the draft rule as amended.

In Favor: Unanimous

9. Discussion of BPC Planning Session

The Board's annual planning session is scheduled for October 26. The staff will review the list of priority discretionary tasks from the previous year and solicit ideas for discussion at the upcoming one.

Presentation by: Henry Jennings
Director

- ☒ Jennings reviewed the list of priorities from the 2006 planning session, pointing out which items had been acted on. He stated he had received additional ideas from Eckert and Simonds. Jennings mentioned the staff wanted to discuss issues relating to e-comments and posting of the Board packet on the website. Simonds suggested that aerial application issues should be discussed.

10. Other Old or New Business

a. Update on the Back Cove YardScaping Demonstration Project—G. Fish

- ☒ Fish directed the Board to the *People, Places and Plants* article on the back cove demonstration project, pointing out that the trails had been installed during June and work on a planting list for next spring was underway.

b. Comments received regarding Bt corn

- ☒ Jennings pointed out that a number of comments relating to the approval of Bt Corn products were received after the Board's decision was made.

c. Letter from Elizabeth Ashe Snow regarding collection of obsolete pesticides

- ☒ Jennings stated the letter from Elizabeth Ash Snow illustrated how important and cost-effective the Board's obsolete pesticide collection program is. He also applauded the cooperation of DEP in assisting with the program, helping out homeowners who need professional remediation assistance.

d. Other

- ☒ Eckert inquired if there was any news regarding the Board member vacancy created when Humphrey resigned. Jennings responded the Department had the name of an ecologist, but the Commissioner was waiting for some additional suggestions to include female candidates. Gender balance is one consideration.

11. Schedule and Location of Future Meetings

November 16 and December 14, 2007, and January 25, 2008, are the tentative dates for the next Board meetings. The conference room at Maple Hill Farm has been reserved for a planning session on October 26, 2007.

Adjustments and/or additional dates?

- ☒ No additional meeting dates were set.

12. Adjourn

- ☒ Jemison/Simonds moved and seconded that the meeting adjourn at 12:59 p.m.

In Favor: Unanimous